IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
May 20, 2008 Session

# STATE OF TENNESSEE v. REGINA WILSON

**Appeal from the Criminal Court for Knox County**
**No. 84205 Richard Baumgartner, Judge**

---

**No. E2007-01463-CCA-R3-CD - Filed December 11, 2008**

---

The State appeals the trial court's grant of a motion to suppress the evidence seized as a result of a search of Appellee Regina Wilson's vehicle and possessions. The search and items seized as a result thereof led to Appellee's indictment for possession of more than .5 grams of cocaine with the intent to sell and possession of more than .5 grams of cocaine with the intent to deliver. The trial court granted a pretrial motion to suppress the evidence. After a review of the record, we conclude that the search was improper and, therefore, affirm the judgment of the trial court granting the motion to suppress.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.**

JERRY L. SMITH, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JOHN EVERETT WILLIAMS, JJ., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; and Randall E. Nichols, District Attorney General, for the appellant, State of Tennessee.

M. Jeffrey Whitt, Knoxville, Tennessee, for the appellee, Regina Wilson.

## OPINION

### FACTUAL BACKGROUND

Appellee was indicted by the Knox County Grand Jury in April of 2006 for one count of possession of more than .5 grams of cocaine with the intent to sell and one count of possession of more than .5 grams of cocaine with the intent to deliver. Appellee filed a motion to suppress the evidence in which she argued that she was unlawfully detained by a Knox County Police Officer and illegally seized and searched without her effective consent. As a result of the illegal search and seizure, Appellee averred that her subsequent arrest and indictment were illegal.

The trial court held a hearing on the motion to suppress. At the hearing, Officer Jeremy Maupin of the Knoxville Police Department testified that on April 3, 2005, he was working as a patrol officer. Officer Maupin received a call from an anonymous source regarding potential illegal activity including drug sales from a Volkswagen Jetta that had a handicap license plate. The tipster informed the officers that the car was parked on Lindon Avenue near the park.

Officer Maupin and several other officers arrived at the scene where the alleged drug activity was taking place. According to Officer Maupin, the area was known to be a problem area for drugs. Appellee and another female were sitting in the vehicle that matched the description provided by the anonymous caller. Officer Maupin pulled his police cruiser in behind the Jetta and approached the vehicle. Appellee was sitting in the front seat on the passenger side and the other female was sitting in the backseat.

When the officers arrived, they:

> just kind of mosey on up next to the vehicle, walk up. We observe [the position of the women in the car] . . . and immediately observe a[n] open container of beer, an alcohol beverage, sitting in the back seat, and we went up and approached the two females and began to talk to them.

Officer Maupin explained to Appellee and the other female that they had received a tip about drug activity. He asked the women about the open container of alcohol in the vehicle and asked to see identification. Appellee informed the officers that the two women were at the park together and that Appellee had just dropped her niece off to play. Officer Maupin then pretended to radio a request for a K-9 unit. He explained that he did this in order to see Appellee's reaction.

According to the officer's testimony, Appellee then got very nervous, jumped out of the car and tried to leave the scene. Appellee asked if she could go get her niece who was playing at the park. The officer told her not to leave. Officer Maupin testified that, at that point, Appellee was not free to leave the scene. Appellee tried to leave the area and Officer Maupin physically grabbed her by the arm, preventing her from leaving the area. Officer Maupin testified to the following:

> At that time, the defendant became - was still, very very nervous to the point that it made me nervous, wondering if she had any weapons on her. I asked her if she had any weapons on her and asked her to search - she had an oxygen bag [containing an oxygen tank]. I think she has a similar bag today in the courtroom. I asked her if she had any weapons, and she said no. I said, "You'll allow me to search?" And she said no.[1] So I unzip it, search it, and at that point it was just an oxygen tank. I then handed it back.

[1] Officer Maupin's testimony later states that Appellee actually consented to the search of the bag at this time. The videotape confirms that Appellee consented to the initial search of the oxygen bag.

. . .

> [S]he's still very, very excited and nervous, moving around. She turns her back from me and faces the door of the vehicle, actually walks up toward the open door, still standing up, and she didn't know, but I was leaning over, looking over what she was doing, and she then proceeded her hand down in her waistband and removed what appeared to be a little change purse.

According to Officer Maupin, Appellee placed the change purse into the oxygen bag that had already been searched and zipped the bag back up while she was leaning over in the car. Officer Maupin did not know what was in the change purse. He testified that he suspected that it was something illegal. Appellee sat down in the passenger seat of the vehicle. Officer Maupin testified that when Appellee sat down in the car, the oxygen bag containing the change purse was on Appellee's lap. Officer Maupin asked Appellee if the K-9 unit would "alert" on her car and if he could search the vehicle. Appellee consented to the search of the vehicle and subsequently exited the vehicle.

At that time:

> [Officer Maupin] said, "Well, what did you put back in this bag." And at that point, I grabbed the bag and began - she didn't like that. She got up out of the car with me with the bag and tried to kind of take it away from me. I shooed her away and unzipped it and pulled out what she had put down in there, and immediately, I unzipped that and looked down, and it was several, several white rocks believed to be crack cocaine.

Officer Maupin conceded at the hearing on the motion to suppress that he did not have Appellee's permission to look in the bag a second time when he asked to search the car. The arrest video demonstrates a struggle between Officer Maupin and Appellee over the oxygen bag. Officer Maupin acknowledged that he never specifically asked to search the bag a second time but that he believed he could search the bag because it was in the vehicle at the time he asked to search the vehicle.

According to Officer Maupin, a total of 57 rocks of crack cocaine were found in Appellee's possession.

At the conclusion of the hearing on the motion to suppress, the trial court granted the motion to suppress. The trial court determined:

> The issue for this hearing is whether the police had probable cause to seize the defendant when they forcibly returned her to the car. . . .
>
> The police investigation in this case is based almost exclusively on an anonymous phone call to the police. Tennessee case law requires probable cause

determinations based on anonymous tips to be analyzed using the two-pronged *Aguilar/Spinelli* analysis. . . .

Additionally, Tennessee case law requires that the state show whether the informant is either a citizen informant or a criminal informant. . . . As the record is silent as to the informant's identity, we will presume the informant is not a citizen informant and use the more stringent *Aguilar/Spinelli* analysis. After all, if the informant's tip would not satisfy warrant requirements and result in the quashing of the warrant . . . , it certainly could not be the basis for a warrantless arrest, as in this case.

. . . .

In the case at bar, the state has not demonstrated the informant had furnished trustworthy information on a specific occasion. There is also no mention of the informant's track record. Thus, the informant's tip does not satisfy the first prong of the *Aguilar/Spinelli* requirements.

. . . .

In the case at bar, we do not know how the informant claimed to know two women in a car were selling drugs. We do not know whether the informant saw the women dealing drugs, or indeed whether the informant had seen drugs on the women. Thus, there is no feasible claim the informant had personally observed the defendant engage in any drug transaction. There is also no claim of self-verifying detail here. The informant's information is vague. Two women were in a car, the color of which was unknown, at a park. The informant did not identify the two women, nor did s/he inform the police where drugs would be found in the car. There is also no indication the informant could link these women to a particular routine, nor is there any information connecting these two specific women to drug transactions. Thus, the informant's basis of knowledge prong, like the reliability/veracity prong, is not satisfied.

. . . .

In the case at bar, however, there is no "independent police corroboration." The State's claim that the defendant became nervous when police called a canine unit does not bolster either prong of the *Aguillar/Spinelli* analysis, used to examine the informant's reliability and basis of knowledge.

Additionally, the tip does not mention a weapon. . . . In the case at bar, the informant was anonymous, there were no indicia of the informant's reliability or basis of knowledge, there was no threat of a weapon, and the police certainly could

not have claimed the defendant was armed and dangerous before approaching her. . . .

> Therefore, at the time the police officers seized the defendant and forcibly returned her to her car, they did not have probable cause to seize her. There were no "facts and circumstances within the arresting officer[s'] knowledge and of which [the officers] had reasonably trustworthy information are sufficient in themselves to warrant a [person] of reasonable caution in the belief that" this defendant had committed or was committing a drug offense. The informant's tip did not meet the two-pronged scrutiny required by *Jacumin* to have probable cause. As there was no probable cause to seize the defendant, then the drugs found after the illegal detention are "come at by the exploitation of that illegality," and must be suppressed.

The State appeals the trial court's decision to grant the motion to suppress.

*Analysis*

On appeal, the State argues that the trial court should have denied the motion to suppress. Specifically, the State argues that Officer Maupin had reasonable suspicion to conduct an investigatory stop based on the anonymous tip he received. Further, the State contends that Officer Maupin had reasonable suspicion to seize Appellee during the investigatory stop when she became nervous and tried to leave the scene. The State further argues that Officer Maupin had probable cause to search Appellee's bag a second time "after watching [her] attempt to conceal the change purse by surreptitiously transferring the change purse from her waistband to her oxygen bag." Moreover, the State asserts that the bag was in the vehicle at the time Appellee consented to the search of the vehicle and Appellee never revoked consent for the search of the vehicle. Consequently, the State posits that the trial court improperly granted the motion to suppress. The Appellee disagrees, arguing that the officer did not have reasonable suspicion to justify the seizure and subsequent illegal search.

This Court will uphold a trial court's findings of fact in a suppression hearing unless the evidence preponderates otherwise. *State v. Hayes*, 188 S.W.3d 505, 510 (Tenn. 2006) (citing *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996)). On appeal, "[t]he prevailing party in the trial court is afforded the 'strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence.'" *State v. Carter*, 16 S.W.3d 762, 765 (Tenn. 2000) (quoting *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998)). "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Odom*, 928 S.W.2d at 23. Our review of a trial court's application of law to the facts is de novo, with no presumption of correctness. *State v. Walton*, 41 S .W.3d 75, 81 (Tenn. 2001) (citing *State v. Crutcher*, 989 S.W.2d 295, 299 (Tenn. 1999); *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997)). When the trial court's findings of fact are based entirely on evidence that does not involve issues of witness credibility, however, appellate courts are

as capable as trial courts of reviewing the evidence and drawing conclusions and the trial court's findings of fact are subject to de novo review. *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000).

Both the Fourth Amendment to the United States Constitution and article I, section 7 of the Tennessee Constitution protect individuals against unreasonable searches and seizures by government agents. *See* U.S. Const. amend. IV; Tenn. Const. art. I, § 7. "These constitutional provisions are designed to 'safeguard the privacy and security of individuals against arbitrary invasions of government officials.'" *State v. Keith*, 978 S.W.2d 861, 865 (Tenn. 1998) (quoting *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967)). The Tennessee Supreme Court has noted previously that "[a]rticle I, [section] 7 [of the Tennessee Constitution] is identical in intent and purpose with the Fourth Amendment [of the United States Constitution]," and that federal cases applying the Fourth Amendment should be regarded as "particularly persuasive." *Sneed v. State*, 423 S.W.2d 857, 860 (Tenn. 1968).

Under both constitutions, "a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." *State v. Yeargan*, 958 S .W.2d 626, 629 (Tenn. 1997) (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971)); *see also State v. Garcia*, 123 S.W.3d 335, 343 (Tenn. 2003). A police officer's stop of an automobile constitutes a seizure under both the United States and Tennessee Constitutions. *See Whren v. United States*, 517 U.S. 806, 809-10 (1996); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 450 (1990); *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *State v. Vineyard*, 958 S.W.2d 730, 734 (Tenn. 1997). Therefore, to be considered "reasonable," a warrantless stop of a driver must fall under an exception to the warrant requirement.

One of these narrow exceptions occurs when a law enforcement officer initiates an investigatory stop based upon specific and articulable facts that the defendant has either committed a criminal offense or is about to commit a criminal offense. *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968); *Binette*, 33 S.W.3d at 218. This narrow exception has been extended to the investigatory stop of vehicles. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975); *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). In evaluating whether the law enforcement officer had reasonable suspicion to justify an investigatory stop, this Court must consider the totality of the circumstances, which includes the personal observations and rational inferences and deductions of the trained law enforcement officer making the stop. *See Terry*, 392 U.S. at 21; *Binette*, 33 S.W.3d at 218; *Watkins*, 827 S.W.2d at 294. Objective standards apply, rather than the subjective beliefs of the officer making the stop. *State v. Norword*, 938 S .W.2d 23, 25 (Tenn. Crim. App. 1996). "'The officer, of course, must be able to articulate something more than an inchoate and unparticularized suspicion or hunch.'" *Yeargan*, 958 S.W.2d at 632 (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (internal quotations and citations omitted)). This includes, but is not limited to, objective observations, information obtained from other police officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders. *Watkins*, 827 S.W.2d at 294 (citing *United States v. Cortez*, 449 U.S. 411, 418 (1981)). A court must also consider the rational inferences and

deductions that a trained police officer may draw from the facts and circumstances known to him. *Terry*, 392 U.S. at 21.

Further, in determining whether probable cause exists to make a warrantless search of an automobile based on an informant's tip, the State must establish (1) that the informant had a basis for his or her information that a person was involved in criminal conduct and (2) that the informant is credible or that his or her information is reliable. *See State v. Jacumin*, 778 S.W.2d 430, 436 (Tenn. 1989). "[W]here a tip fails under either or both of the two prongs, probable cause may still be established by independent police investigative work that corroborates the tip to such an extent that it supports the inference that the informant was reliable and that the informant made the charge on the basis of information obtained in a reliable way." *State v. Bridges*, 963 S.W.2d 487, 491 (Tenn. 1997). In addition, "[p]robable cause need not rest on an informant's tip alone, but may be supplemented by direct observation by the officers or a combination of the two." *State v. Shrum*, 643 S.W.2d 891, 894 (Tenn. 1982).

It is settled law that a "seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (citing *United States v. Jacobsen*, 46 U.S. 109, 124 (1984)). In determining whether a person has been seized, our supreme court has adhered to a totality of the circumstances approach. *State v. Randolph*, 74 S.W.3d 330, 336 (Tenn. 2002). Furthermore, our supreme court has "consistently applied the standard set forth by the United States Supreme Court in [*United States v.*] *Mendenhall*, 446 U.S. [544 (1980)], i.e., whether 'in view of all the circumstances surrounding the incident, a reasonable person would have believed he or she was not free to leave.'" *Randolph*, 74 S.W.3d at 336 (citing *State v. Daniel*, 12 S.W.3d 420, 425 (Tenn. 2000); *State v. Pulley*, 863 S.W.2d 29, 30 (Tenn. 1993)).

The line between reasonable detention for routine investigation and detention which could be characterized as capricious and arbitrary is hazy at best.

> "[D]ue regard for the practical necessities of effective law enforcement requires that the validity of brief, informal detention be recognized whenever it appears from the totality of the circumstances that the detaining officers could have had reasonable grounds for their actions. A founded suspicion is all that is necessary, some basis from which the court can determine that the [seizure] was not arbitrary or harassing."

*State v. Goad*, 549 S.W.2d 377, 379 (Tenn. 1977) (quoting *Wilson v. Porter*, 361 F.2d 412, 415 (9th Cir. 1966)); *see also State v. McLennan*, 503 S.W.2d 909, 911 (Tenn. 1973).

We recognize that reasonable suspicion of criminal activity is not required for a police officer to approach a vehicle parked in a public place and request the driver's identification and registration documents. *See, e.g., State v. Williams*, 185 S.W.3d 311, 315 (Tenn. 2006); *Pulley*, 863 S.W.2d at 30. However, a consensual citizen-police encounter is elevated to a seizure when the officer through physical force or show of authority restrains the citizen of his liberty. *Williams*, 185 S.W.3d at 316;

*see Terry*, 392 U.S. at 19 n.16. If the citizen would not, in view of the totality of the circumstances, feel free to leave, a seizure has occurred. *Williams*, 185 S.W.3d at 316; *see. Mendenhall*, 446 U.S. at 554.

In determining whether Officer Maupin's conduct amounted to a seizure, we consider "all the circumstances surrounding the encounter to determine whether police conduct would have communicated to a reasonable person that the person was not free to decline the officer's request or otherwise terminate the encounter." *Florida v. Bostick*, 501 U.S. 429, 440 (1991). If the police-citizen encounter constitutes a seizure, then, to be valid, the officer must have "a reasonable suspicion, supported by specific and articulable facts, that a criminal offense has been, or is about to be, committed." *State v. Moore*, 775 S.W.2d 372, 378 (Tenn. Crim. App. 1989).

In the present case, according to Officer Maupin's testimony, he was responding to an anonymous call about two women that were sitting in a car at the park and performing some type of drug activity. The testimony at the hearing on the motion to suppress sheds no light on the identity of the informant, the informant's credibility, or the basis for the informant's knowledge. Officer Maupin drove to the scene and found a vehicle matching the description. The vehicle contained Appellee sitting in the passenger seat and another female sitting in the back passenger seat drinking what appeared from our review of the videotape to be a forty ounce beer. Because Officer Maupin was dispatched to the area after receiving an anonymous tip that reported suspected drug activity in a location that was known for drug activity, we conclude that he had reasonable suspicion that Appellee's vehicle was the one the caller had identified. In other words, his observations at least somewhat corroborated the information from the anonymous call. *See State v. James Chester Cobb, Sr.*, No. 01-C-019011CC00308, 1991 WL 71910, at *2 (Tenn. Crim. App., at Nashville, May 7, 1991) (holding that use of the *Aguilar/Spinelli* standard for issuance of search warrants, which focused on credibility of informant and reliability of information, was helpful in analyzing whether a police stop involving an anonymous tip was supported by reasonable suspicion); *see generally Spinelli v. United States*, 393 U.S. 410 (1969); *Aquilar v. Texas*, 378 U.S. 108 (1964); *Jacumin*, 778 S.W.2d at 435-36 (adopting *Aguilar/Spinelli* test in Tennessee). We determine that the independent police corroboration herein supported a brief investigatory stop of Appellee, however, the evidence presented by the State does not amount to complete independent police corroboration of the alleged drug activity reported by the informant such that Officer Maupin's observations alone led to probable cause that would justify more than a brief detention of Appellee.

The remaining question therefore is whether the detention beyond that necessary to briefly question Appellee was justifiable. The State asserts that Officer Maupin's observations of Appellee's behavior gave him reasonable suspicion to seize Appellee during the investigatory stop. Further, the State contends that because the "initial seizure" of Appellee was proper, the continuing detention which ultimately led to the discovery of the crack cocaine in the oxygen bag was legal. We disagree. Viewing the facts, there is no question Appellee was seized within the meaning of the Fourth Amendment at the moment Officer Maupin physically restrained Appellee from leaving the scene. When Officer Maupin then searched Appellee's oxygen bag and did not find anything that would justify any further detention of Appellee, he nevertheless continued to detain her. Officer

Maupin pretended to call for a K-9 unit and asked to search the car. He testified that Appellee became nervous and was "fiddling" around inside the car by taking something from her waistband and placing it into the oxygen bag. Officer Maupin stated that he observed Appellee place something into the oxygen bag while she was leaning over in the vehicle. He then asked Appellee for consent to search the vehicle and grabbed the oxygen bag from Appellee as she exited the vehicle. Officer Maupin admitted that he did not have permission to search the bag a second time. After viewing the videotape of the incident, we are not surprised that Officer Maupin described Appellee as nervous, as he was being unnecessarily detained without cause by at least four police officers and was physically grabbed by Officer Maupin when she attempted to leave the area to get her niece. Officer Maupin's initial questioning and search did not reveal anything that would legally allow him to further detain Appellee. Consequently, the trial court properly determined the evidence in this case was the product of an illegal extended detention and should be suppressed. Accordingly, we affirm the judgment of the trial court.

*Conclusion*

For the foregoing reasons, the judgment of the trial court is affirmed.

_____

JERRY L. SMITH, JUDGE